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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,538	01/23/2002	Tetsunori Kaji	520.35237VX3	4015
20457	7590	07/17/2007	EXAMINER	
ANTONELLI, TERRY, STOUT & KRAUS, LLP			CROWELL, ANNA M	
1300 NORTH SEVENTEENTH STREET			ART UNIT	
SUITE 1800			PAPER NUMBER	
ARLINGTON, VA 22209-3873			1763	
			NOTIFICATION DATE	DELIVERY MODE
			07/17/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/052,538	KAJI ET AL	
	Examiner	Art Unit	
	Michelle Crowell	1763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 April 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 75-98 is/are pending in the application.
- 4a) Of the above claim(s) 75-86 and 93-98 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 87-92 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 04/07.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

Election/Restrictions

1. Applicant's election without traverse of Species III, Figure 28, claims 87-92 in the reply filed on April 13, 2007 is acknowledged.
2. Claims 75-86 and 93-98 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 92 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. Claim 92 requires "to etch a fine pattern of 0.2 μ m or smaller on the sample". The specification portion of the current invention fails to disclose this feature. The prior art (col. 3, lines 33-37, USP 6,197,151) indicates that it is difficult to manufacture a fine pattern of 0.2 μ m or smaller on the sample. The current invention simply requires "to manufacture a fine pattern (no dimensions are given for the fine pattern) on a large sized sample having a diameter of 300 mm or more (col. 5, lines 7-10), not specifically a fine pattern of 0.2 μ m or smaller on the sample.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 87-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins et al. (U.S. 5,300,460) in view of Ohmi (U.S. 5,272,417), Lenz et al. (U.S. 5,609,720), Heinrich et al. (U.S. 5,527,394), and Mintz et al. (U.S. 5,223,457).

Referring to column 8, line 28-column 9, line 68, Collins et al. discloses a plasma processing apparatus comprising: a vacuum processing chamber (col. 7, lines 10-20), a pair of electrodes opposite to each other that are disposed in the vacuum processing chamber, one of the electrodes being used also as a sample table capable of holding a sample having a diameter of 127 mm containing an insulator (col. 7, lines 10-20, col. 8, line 44, col. 9, line 45), a gas introducing means capable of introducing a fluorine-containing etching gas into the vacuum processing chamber (col. 8, line 64, col. 9, line 15), a means for applying a high-frequency

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electric power of 50-600 MHz (col. 8, lines 28-34) between the pair of electrodes whose gap is set to 50-300 mm (col. 8, lines 35-43) and for setting a pressure inside the vacuum chamber to 0.267-26.66 Pa (col. 53-57).

Collins et al. discloses a sample diameter of 127 mm; yet, fails to explicitly teach the diameter of the sample being 300 mm or more; however, it is still obvious.

Referring to column 2, lines 35-41, Lenz et al. teaches that it is conventionally known in the art to process a wafer having a diameter of 300 mm. Thus, it would have been obvious to scale up the apparatus of Collins et al. to process a wafer having a diameter of 300 mm since it is conventionally known in the art to process wafers having a diameter of 300 mm. Additionally, according to *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to scale up/down the apparatus of Collins et al. in order to process a sample with a diameter of 300 mm or more.

Collins et al. fails to disclose a magnetic forming means, including a pair of coils, for forming a magnetic field designed to generate increased plasma density at a portion within an outer periphery of the sample which is greater than the plasma density at the center of the sample.

Referring to Figure 2c and column 5, lines 26-53, Heinrich et al. teach a magnetic field forming means ((Sp), including a pair of coils, for forming a magnetic field designed to generate increased plasma density at a portion within an outer periphery of the sample which is greater than the plasma density at the center of the sample in order to enhance process uniformity. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the magnetic forming means of Collins et al. with the magnetic forming means as taught by Heinrich et al. in order to enhance process uniformity.

Collins et al. in view of Heinrich et al., fails to teach the magnetic field smaller than 30 gauss.

Referring to column 6, lines 51-59, Mintz teaches a plasma etching apparatus using a magnetic field less than 30 gauss (between 1-20 gauss) in order to deflect plasma ions and thereby prevent wafer contamination. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention for the magnetic field forming means of Collins et al. in view of Heinrich et al., with a magnetic field intensity less than 30 gauss as taught by Mintz et al. in order to deflect plasma ions and thereby prevent wafer contamination.

Collins et al. fails to disclose a bias electric power source.

Referring to Figure 1 and column 6, lines 62-68, Ohmi teaches a bias electric power source 110 connected to sample table 104 for generating a bias voltage. It is conventionally known in the art bias the sample table since this would change the energy of the ions reaching the sample surface in order to control the selectivity ratio. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the apparatus of Collins et

al. with a bias electric power connected to the sample table since this would change the energy of the ions reaching the sample surface in order to control the selectivity ratio.

With respect to the plasma density, Collins et al. discloses a high frequency electric power source of 50-600 MHz, an electrode spacing of 50-300 mm, and a pressure of 0.267-26.66 Pa. It is known in the art to appropriately select the chamber conditions in order to generate high density plasma. Furthermore, it should be noted that plasma density is not a parameter that is set or controlled directly. In fact, plasma density is set as a result of controlling process parameters such as pressure, power, and electrode spacing. Thus, since Collins et al. disclose a high frequency electric power source of 50-600 MHz, an electrode spacing of 50-300 mm, and a pressure of 0.267-26.66 Pa., it is inherent that the resulting plasma density generated in Collins in view of Ohmi et al. and Lenz et al. will fall between the range of $5 \times 10^{10} \text{ cm}^{-3}$ to $5 \times 10^{11} \text{ cm}^{-3}$.

With respect to the “to etch a fine pattern of 0.2 μm or smaller on the sample having a diameter of 300 mm or more”, this limitation is considered a process limitation. The apparatus of Collins in view of Ohmi et al. and Lenz et al. is capable of being used to produce such a fine pattern of 0.2 μm or smaller on the sample having a diameter of 300 mm or more by simply optimizing the power, pressure, and electrode spacing. Furthermore, apparatus claims cover what a device is, not what a device does.

Regarding the limitation of “fluorine-containing etching gas”, the type of gas used in apparatus claims is considered intended use and therefore is of no significance in determining patentability. Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. Ex parte Thibault,

164 USPQ 666, 667 (Bd. App. 1969). Furthermore, the apparatus of Ohmi is capable of providing a fluorine containing etching gas to the sample.

Regarding the limitation of “an insulator film in the sample”, this is considered intended use and therefore is of no significance in determining patentability. The inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” In re Young, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963). Moreover, the apparatus of Collins et al. is capable of processing an insulator film in the sample.

Regarding the above apparatus claims, it should be noted that a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Second Art Rejection

11. Claims 87-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi (U.S. 5,272,417) in view of Collins et al., Lenz et al. (U.S. 5,609,720), Heinrich et al. (U.S. 5,527,394), and Mintz et al. (U.S. 5,223,457).

Referring to Figure 1, column 6, line 25-column 7, line 6, and column 8, line 61-68, Ohmi discloses a plasma processing apparatus comprising: a vacuum processing chamber 105 (col. 6, lines 27-28), a pair of electrodes 102, 104 opposite to each other that are disposed in the vacuum processing chamber, one of the electrodes 104 being used also as a sample table capable

of holding a sample having a diameter of 254 mm containing an insulator film (col. 6, lines 25-27, col. 12, lines 12-15, col. 15, lines 64-68), a gas introducing means capable of introducing a fluorine-containing etching gas into the vacuum processing chamber (col. 6, lines 30-31, col. 8, lines 65-66), means for applying a high frequency electric power of 100 MHz –250 MHz is applied between the pair of electrodes (col. 8, lines 23-27, col. 4, lines 31-33) whose gap is set to 30 mm (col. 8, line 24) and for setting a pressure inside the vacuum processing chamber to 0.933 Pa (col. 8, line 25), bias electric power source 110 connected to the one electrode 104 (col. 6, lines 62-68).

Ohmi fails to specifically teach a motivation for the processing parameters and a pressure range of 1.0 to 4.0 Pa.

Referring to column 8, lines 28-57, Collins et al. additionally teaches a means for applying a high-frequency electric power of 50-600 MHz (col. 8, lines 28-34) between the pair of electrodes whose gap is set to 50-300 mm (col. 8, lines 35-43) and for setting a pressure inside the vacuum chamber to 0.267-26.66 Pa (col. 53-57) so that anisotropic etch will occur at the desired etch rate. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to operate the apparatus of Ohmi with the process parameters and specifically the pressure range of Collins et al. so that anisotropic etch will occur at the desired etch rate.

Ohmi discloses a sample diameter of 254 mm; yet, fails to explicitly teach the diameter of the sample being 300 mm or more; however, it is still obvious.

Referring to column 2, lines 35-41, Lenz et al. teaches that it is conventionally known in the art to process a wafer having a diameter of 300 mm. Thus, it would have been obvious to scale up the apparatus of Ohmi to process a wafer having a diameter of 300 mm since it is

conventionally known in the art to process wafers having a diameter of 300 mm. Additionally, according to *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to scale up/down the apparatus of Ohmi in order to process a sample with a diameter of 300 mm or more.

Ohmi fails to disclose a magnetic forming means, including a pair of coils, for forming a magnetic field designed to generate increased plasma density at a portion within an outer periphery of the sample which is greater than the plasma density at the center of the sample.

Referring to Figure 2c and column 5, lines 26-53, Heinrich et al. teach a magnetic field forming means ((Sp) , including a pair of coils, for forming a magnetic field designed to generate increased plasma density at a portion within an outer periphery of the sample which is greater than the plasma density at the center of the sample in order to enhance process uniformity. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the magnetic forming means of Ohmi with the magnetic forming means as taught by Heinrich et al. in order to enhance process uniformity.

Ohmi in view of Heinrich et al., fails to teach the magnetic field smaller than 30 gauss.

Referring to column 6, lines 51-59, Mintz teaches a plasma etching apparatus using a magnetic field less than 30 gauss (between 1-20 gauss) in order to deflect plasma ions and

thereby prevent wafer contamination. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention for the magnetic field forming means of Ohmi in view of Heinrich et al., with a magnetic field intensity less than 30 gauss as taught by Mintz et al. in order to deflect plasma ions and thereby prevent wafer contamination.

With respect to the plasma density, Ohmi et al. and Collins et al. discloses a high frequency electric power source of 10-250 MHz, an electrode spacing of 30 mm, and a pressure of 0.267-26.66 Pa. It is inherently known in the art the high density plasma is generated from the appropriate chamber conditions. Furthermore, it should be noted that plasma density is not a parameter that is set or controlled directly. In fact, plasma density is set as a result of controlling process parameters such as pressure, power, and electrode spacing. Thus, since Ohmi et al. and Collins et al. disclose a high frequency electric power source of 10-250 MHz, an electrode spacing of 30 mm, and a pressure of 0.267-26.66 Pa, it is inherent that the resulting plasma density generated in Ohmi in view of Collins et al. and Lenz et al. will fall between the range of $5 \times 10^{10} \text{ cm}^{-3}$ to $5 \times 10^{11} \text{ cm}^{-3}$.

With respect to the “to etch a fine pattern of 0.2 μm or smaller on the sample having a diameter of 300 mm or more”, this limitation is considered a process limitation. The apparatus of Collins in view of Ohmi et al. and Lenz et al. is capable of being used to produce such a fine pattern of 0.2 μm or smaller on the sample having a diameter of 300 mm or more by simply optimizing the power, pressure, and electrode spacing. Furthermore, apparatus claims cover what a device is, not what a device does.

Regarding the limitation of “fluorine-containing etching gas”, the type of gas used in apparatus claims is considered intended use and therefore is of no significance in determining patentability. Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, the apparatus of Ohmi is capable of providing a fluorine containing etching gas to the sample.

Regarding the limitation of “a pressure condition of 0.5 Pa to 4.0 Pa”, this is considered intended use and therefore is of no significance in determining patentability. The apparatus of Ohmi is capable of providing a pressure condition of 0.5 Pa to 4.0 Pa.

Regarding the limitation of “an insulator film in the sample”, this is considered intended use and therefore is of no significance in determining patentability. The inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963). Moreover, the apparatus of Ohmi is capable of processing an insulator film in the sample.

Regarding the above apparatus claims, it should be noted that a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Third Art Rejection

12. Claims 87-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koshiishi et al. (U.S. 5,919,332) in view of Lenz et al. (U.S. 5,609,720) and Collins et al. (U.S. 5,300,460), Heinrich et al. (U.S. 5,527,394), and Mintz et al. (U.S. 5,223,457).

Referring to Figure 1 and column 9, line 7-column 13, line 17, Koshiishi et al. discloses a plasma etching apparatus comprising a vacuum processing chamber 2 (Fig. 1) and a pair of electrodes 6, 21 opposite to each other that are disposed in the vacuum processing chamber (col. 9, lines 66-67), one of the electrodes being used also as a sample table 6 capable of holding a sample containing an insulator film (col. 11, line 40), wherein the plasma etching apparatus further comprises: a gas introducing means 23, 27 for introducing an etching gas containing at least fluorine and carbon into the vacuum processing chamber (col. 10, lines 17-24); means for generating a plasma with a density of $5 \times 10^{10} \text{ cm}^{-3}$ to $5 \times 10^{11} \text{ cm}^{-3}$ between the pair of electrodes to provide a substantially uniform plasma over the sample or more to etch a fine pattern on the sample (col. 13, lines 14-17); and a bias electric power source 44 connected to one of the electrodes to control energy of ions in the plasma (col. 11, lines 17-23).

Koshiishi et al. fail to specifically teach the sample having a diameter of 300 mm.

Referring to column 2, lines 35-41, Lenz et al. teaches that it is conventionally known in the art to process a wafer having a diameter of 300 mm. Thus, it would have been obvious to scale up the apparatus including the table of Koshiishi et al. to process a wafer having a diameter of 300 mm since it is conventionally known in the art to process wafers having a diameter of 300 mm. Additionally, according to *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held

that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to scale up/down the apparatus including the table of Koshiishi et al. in order to process a sample with a diameter of 300 mm or more and additionally the motivation for optimizing the size of the table is to enable the table to hold the desired size of substrate.

The teachings of Koshiishi et al. in view of Lenz et al. have been discussed above.

Koshiishi et al. in view of Lenz et al. fail to explicitly teach a power of 30 MHz to 300 MHz; however, the combination (specifically Koshiishi et al., col. 11, lines 23-29) teaches that the apparatus is capable of operating a power source 47 at a frequency higher than 1 MHz.

Additionally, referring to column 7, lines 37-54, Collins teaches that it is conventionally known in the art to use a power source in a frequency range of 30 MHz to 300 MHz since it enhances the etch rate and reduces microloading effects. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention for the frequency range of the power source of Koshiishi et al. in view of Lenz et al. to operate between 30 MHz to 300 MHz as taught by Collins et al. since it enhances the etch rate and reduces microloading effects.

Koshiishi et al. fails to specifically teach a motivation for a pressure range of 0.4 to 4.0 Pa.

Referring to column 8, lines 28-57, Collins et al. additionally teaches setting a pressure inside the vacuum chamber to 0.267-26.66 Pa (col. 53-57) so that anisotropic etch will occur at the desired etch rate. Thus, it would have been obvious to one of ordinary skill in the art at the

time of the invention to operate the apparatus of Koshiishi et al. with the pressure range of Collins et al. so that anisotropic etch will occur at the desired etch rate.

Koshiishi et al. fail to disclose a magnetic forming means, including a pair of coils, for forming a magnetic field designed to generate increased plasma density at a portion within an outer periphery of the sample which is greater than the plasma density at the center of the sample.

Referring to Figure 2c and column 5, lines 26-53, Heinrich et al. teach a magnetic field forming means ((Sp), including a pair of coils, for forming a magnetic field designed to generate increased plasma density at a portion within an outer periphery of the sample which is greater than the plasma density at the center of the sample in order to enhance process uniformity. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the magnetic forming means of Koshiishi et al. with the magnetic forming means as taught by Heinrich et al. in order to enhance process uniformity

Koshiishi et al. in view of Heinrich et al., fails to teach the magnetic field smaller than 30 gauss.

Referring to column 6, lines 51-59, Mintz teaches a plasma etching apparatus using a magnetic field less than 30 gauss (between 1-20 gauss) in order to deflect plasma ions and thereby prevent wafer contamination. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention for the magnetic field forming means of Koshiishi et al. in view of Heinrich et al., with a magnetic field intensity less than 30 gauss as taught by Mintz et al. in order to deflect plasma ions and thereby prevent wafer contamination.

With respect to the “to etch a fine pattern of 0.2 μm or smaller on the sample having a diameter of 300 mm or more”, this limitation is considered a process limitation. The apparatus of Koshiishi et al. in view of Lenz et al. discloses a plasma density of $5 \times 10^{10} \text{ cm}^{-3}$ to $5 \times 10^{11} \text{ cm}^{-3}$ and thus the apparatus is capable of being used to produce such a fine pattern of 0.2 μm or smaller on the sample having a diameter of 300 mm or more by simply optimizing the power, pressure, and electrode spacing. Furthermore, apparatus claims cover what a device is, not what a device does.

Regarding the limitation of “fluorine-containing etching gas”, the type of gas used in apparatus claims is considered intended use and therefore is of no significance in determining patentability. Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, the apparatus of Ohmi is capable of providing a fluorine containing etching gas to the sample.

Regarding the limitation of “a pressure condition of 0.5 Pa to 4.0 Pa”, this is considered intended use and therefore is of no significance in determining patentability. The apparatus of Ohmi is capable of providing a pressure condition of 0.5 Pa to 4.0 Pa.

Regarding the limitation of “an insulator film in the sample”, this is considered intended use and therefore is of no significance in determining patentability. The inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963). Moreover, the apparatus of Ohmi is capable of processing an insulator film in the sample.

Regarding the above apparatus claims, it should be noted that a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Response to Arguments

13. Applicant's arguments filed April 13, 2007 have been fully considered but they are not persuasive.

Applicant has argued that Heinrich fail to teach the cancellation and superposed arrangement defined in claim 87; however, the arrangement of Heinrich does teach the magnetic field forming means of claim 87. In Figure 28 of applicant's specification, the magnetic coil arrangement includes a pair of coils 230 & 240 wherein the magnetic field lines run parallel and perpendicular to the substrate. Similarly, as seen in Figure 2c, Heinrich teaches the structure of a pair of coils wherein the magnetic field lines run parallel and perpendicular to the substrate and hence is capable of producing the claimed cancellation and superposed arrangement. Thus, Heinrich satisfies the claimed requirement of a magnetic field forming means.

Applicant has argued that “fine pattern” on a large size sample should be interpreted to be 0.2 mm or smaller; however, as stated above, the specification portion of the current invention fails to disclose this feature. The prior art (col. 3, lines 33-37, USP 6,197,151) indicates that it is difficult to manufacture a fine pattern of 0.2 μ m or smaller on the sample. The current invention

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simply requires "to manufacture a **fine pattern** (no dimensions are given for the fine pattern) on a large sized sample having a diameter of 300 mm or more (col. 5, lines 7-10), not specifically a fine pattern of 0.2 μ m or smaller on the sample.

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Crowell whose telephone number is (571) 272-1432. The examiner can normally be reached on M-F (9:30 -6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on (571) 272-1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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